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Supreme Court, U.S.
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No. _____

IN THE
Supreme Court of the United States

JAY PHILLIP GRUND,

Petitioner,

v.

TRACEY ANN SPRINKLE,

Respondent.

On Petition For Writ Of Certiorari
To The Supreme Court of Georgia

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

Whether Pro Se Petitioner's Due Process Rights were violated when the trial court failed to give adequate and proper notice to Petitioner of a final hearing to determine his child support obligations.

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JURISDICTION

The Supreme Court of Georgia entered judgment denying Petitioner's Motion for Reconsideration on July 28, 2009 (APP 1). This court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY AND CONSTITUTIONAL PROVISIONS INVOLVED

The Fourteenth Amendment to the United States Constitution provides in relevant part: "nor shall any State deprive any person of life, liberty, or property, without due process of law..." U.S.C.A. Const. Amend. 14.

O.C.G.A. § 9-11-40 (c) provides:

> (c) Assignment of cases for trial. The courts shall provide for the placing of actions upon the trial calendar:
> (1) Without request of the parties but **upon notice to the parties; or**
> (2) Upon request of a party and **notice to the other parties.**
>
> Except for cause, cases shall be placed upon the calendar in chronological order in accordance with filing dates. Precedence shall be given to actions entitled thereto by any statute.

Id. (emphasis added).

> O.C.G.A. § 9-11-58 provides in relevant part:
>
> (a) Signing. Except when otherwise specifically provided by statute, all judgments shall be signed by the judge and filed with the clerk. The signature of the judge shall be followed by the spelling of the judge's name and title legibly typed, printed, or stamped.
>
> (b) When judgment entered. The filing with the clerk of a judgment, signed by the judge, with the fully completed civil case disposition form constitutes the entry of the judgment, and, unless the court otherwise directs, no judgment shall be effective for any purpose until the entry of the same, as provided in this subsection.

Id.

STATEMENT OF THE CASE

Factual background and proceedings below[1]

The parties obtained a divorce in 2000. The divorce decree incorporated a settlement agreement which contemplated child support to be equal to twenty-five percent (25%) of Petitioner's gross income, as defined. The Agreement provided that gross income was to be determined "based upon a yearly review of Husband's W-2s on February 15 of each year." (APP 39).

The modification petition,[2] which this appeal concerns, filed *pro se* by Petitioner on December 12, 2005, seeks modification of custody pursuant to the election of the children, designating Petitioner as primary legal custodian of the parties' two (2) sons, JOSHUA PHILLIP GRUND and ZACHARY JOSEPH GRUND, then fourteen (14) and eleven (11) years of age respectively.

Petitioner retained counsel and attorney Mark O. Shriver, IV, filed his Entry of Appearance on January 10, 2006.

A Consent Temporary Order was entered on February 8, 2006 wherein Petitioner was awarded joint primary custody of the eldest child. Joint

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[1] Petitioner has only included the procedural history and orders pertinent to the issue on appeal.

[2] Jay Phillip Grund v. Tracy Ann Sprinkle, Civil Action File Number 05-1-10056-33, Superior Court of Cobb County, Georgia, the Honorable Judge Bodiford presiding.

primary custody of the younger child remained with Respondent.

On April 11, 2006, Respondent filed an Application for Citation for Contempt as a motion within Petitioner's Modification of Custody Proceedings, and not as a separate action. On May 22, 2006, the trial court held a hearing on the Application for Citation for Contempt. During the hearing, the trial court indicated that there would be a status hearing within ninety (90) days to conduct a review of a counseling requirement, and further stated the intent to have a final hearing on June 28, 2006. No document was issued by the trial court reflecting this date. The trial court also mentioned three other dates concerning potential hearings: June 18th, June 30th and an unspecified September date. Petitioner's counsel at that time, Mr. Shriver, agreed to prepare the Order(s) for the Judge.

On June 22, 2006, six (6) days before the final hearing was held, and without having prepared any Orders as he promised the trial court, Mr. Shriver filed a Motion to Withdraw and Notification of Withdrawal as Counsel (APP 22 - 26). Within the Notification of Withdrawal as Counsel was an averment by Mr. Shriver that "Plaintiff JAY PHILLIP GRUND, is hereby notified that there are presently no court dates set in this matter." (APP 25). Mr. Shriver filed contemporaneously a Consent to Withdraw (APP 20) signed by Petitioner which contained the

following averment, "I have been informed by Mr. Shriver that there are presently no court dates set in this matter." (APP 20). Mr. Shriver never prepared the Order(s) from the May 22, 2006 hearing setting the date for the June 28, 2006 Final Hearing.

Therefore, both the trial court and Respondent's counsel had knowledge, as confirmed by the record, that six (6) days prior to the hearing, the then *pro se* Petitioner had been told by his withdrawing counsel, an officer of the court, that no court dates were scheduled in the case.

On June 28, 2006, the trial court apparently held a Final Hearing despite being in receipt of the Motion to Withdraw, Notification of Withdrawal as Counsel and Consent to Withdraw, indicating Petitioner had been advised by his counsel that no hearings were scheduled. At no point did Petitioner receive notice of the hearing from the trial court, nor did the trial court inquire into Petitioner's non-appearance. At the final hearing, Respondent presented and the trial court considered non-W-2 income and hypothetical 2006 rental income in determining an increase to Petitioner's child support obligations. The trial court considered non-W-2 income despite and in contravention of the explicit language in the Settlement Agreement that child support shall be determined based upon a yearly review of the Husband's W-2 income on February 15 of each year.

On June 29, 2006, Petitioner, showing extraordinary diligence, retained the undersigned in anticipation of a future hearing and a Notice of Appearance was filed.

On July 7, 2006, the trial court entered an Order permitting the withdrawal of Mr. Shriver *nunc pro tunc* to June 22, 2006, despite no action by the trial court on that date (APP 17). Petitioner was never served with the Order notifying him that Mr. Shriver's Motion to Withdraw had been granted. Moreover, the Order utilized improper *nunc pro tunc* designation as it supplied an action never made by the court.

On February 18, 2007, the trial court executed the Temporary Order *nunc pro tunc* to May 22, 2006 (APP 15), which memorialized the May 22, 2006 Hearing, and also the Final Order *nunc pro tunc* to June 28, 2006 (APP 10), which memorialized the June 28, 2006 Final Hearing.

Paragraph Two (2) of the Final Order (APP 11) arbitrarily and erroneously used a different formulation to determine Petitioner's child support obligation than the formulation set forth in the Settlement Agreement. The Settlement Agreement required that the amount of child support be "determined based upon a yearly review of his W-2's on February of each year," not an independent assessment of Petitioner's "gross" income, as the trial court concluded in Petitioner's absence.

Paragraph Three (3) of the Final Order (APP 11) incorrectly calculates Petitioner's child support

income based on items which were clearly not "W-2" items. Based on these improperly included items, the trial court granted Respondent an inappropriate and inaccurate award of One Hundred Nine Thousand, Six Hundred Sixty-Six and 75/100 Dollars ($109,666.75). Had the trial court utilized the correct procedures prescribed in the Settlement Agreement, she would in fact have been entitled to nothing ($0.00).

On February 28, 2007, Petitioner filed his Motion to Vacate/for Rehearing. On May 2, 2007, the trial court held a hearing on the Motion to Vacate/For Rehearing.

During the May 2, 2007 hearing, the trial court stated that for many years it had a policy of normally providing written notice to pro se litigants.

On June 27, 2007, the trial court entered its Final Order denying the Motion to Vacate/For Rehearing (APP 7).

Petitioner filed a Motion to Set Aside Judgment on October 1, 2007 pursuant to O.C.G.A. § 9-11-60 (d), based on the constitutional procedural due process issue of lack of notice and an opportunity to be heard. The trial court entered its Order denying Motion to Set Aside Judgment on May 5, 2009 (APP 5).

On June 3, 2009, Petitioner appealed the May 5, 2009 Order denying Motion to Set Aside Judgment to the Georgia Court of Appeals, asserting a violation of procedural due process.

On June 26, 2009, the Georgia Court of Appeals transferred the case to the Supreme Court of Georgia pursuant to Georgia Constitution of 1983, Art. VI, Sec. VI, Par. III (6), giving appellate jurisdiction to the Supreme Court of Georgia over all divorce and alimony cases (APP 3).

On July 17, 2009, the Georgia Supreme Court denied the Application for Discretionary Appeal (APP 2).

On July 28, 2009, the Georgia Supreme Court denied Petitioner's Motion for Reconsideration (APP 1). Petitioner's Motion for Reconsideration was based on constitutional procedural due process grounds for failure to provide Petitioner with notice and an opportunity to be heard.

On September 9, 2009, Petitioner filed his Notice of Intention to Petition for Writ of Certiorari in the Supreme Court of the United States and Motion for Stay/Supersedeas Pursuant to United States Supreme Court Rule 23 and O.C.G.A. § 15-6-9 with the Superior Court of Cobb County, Georgia.

REASONS FOR GRANTING THE PETITION

This case presents a clear opportunity to reaffirm the Procedural Due Process guarantees in the United States Constitution and the requirement of proper and adequate notice to a party before the arbitrary deprivation of one's due

process rights, specifically in the context of a divorce and child custody proceeding.

I. The trial court erred in determining that Petitioner had adequate and proper notice of the June 28, 2006 Final Hearing date in violation of O.C.G.A. § 9-11-40 (c).

The trial court was requested to vacate a Final Order on the grounds that, *inter alia*, Respondent did not have notice of the hearing. It is not disputed that at the May 22, 2006 temporary hearing the trial court announced its intention to conduct a final hearing on June 28, 2006 and also to conduct a review of a counseling requirement within ninety (90) days of the temporary hearing. It is also not disputed that the Temporary Order announced on May 22, 2006, setting the date for the June 28, 2006 hearing, was not executed by the trial court and was not filed in the record until February 18, 2007, *nunc pro tunc* to May 22, 2006, some eight (8) months later.

A. The Temporary Order was not effective until it was signed by the trial court and entered in the record.

That an order is not effective until it is signed by the court is an axiomatic provision of

Georgia Law. The statutory basis is found in O.C.G.A. § 9-11-58 in relevant part as follows:

> (a) Signing. Except when otherwise specifically provided by statute, all judgments shall be signed by the judge and filed with the clerk. The signature of the judge shall be followed by the spelling of the judge's name and title legibly typed, printed, or stamped.
> (b) When judgment entered. The filing with the clerk of a judgment, signed by the judge, with the fully completed civil case disposition form constitutes the entry of the judgment, and, unless the court otherwise directs, **no judgment shall be effective for any purpose until the entry of the same, as provided in this subsection.**

Id. (emphasis added).

Many Georgia appellate cases illustrate this precept. See e.g.: In Interest of R.R., 222 Ga. App. 301, 474 S.E.2d 12 (1996) (trial court's oral pronouncements on the record, while providing appellate insight as to the intent of its subsequent written judgment, are not judgments and what a judge orally declares is not judgment until it has been reduced to writing and entered by the court); Zeitman v. McBrayer, 201 Ga.App. 767, 412 S.E.2d 287 (1991) (until entered in accordance with provision of statute governing entry of judgment,

judgment is inchoate and of no effect for any purpose). See also Bradley v. Tattnall Bank, 170 Ga. App. 821, 318 S.E.2d 657 (1984); Maroska v. Williams, 146 Ga. App. 130, 245 S.E.2d 470 (1978); Bloodworth v. Thompson, 230 Ga. 628, 198 S.E.2d 293 (1973); Williams v. Horn, 124 Ga. App. 485, 184 S.E.2d 198 (1971); Waller v. Waller, 226 Ga. 279, 174 S.E.2d 433 (1970); Herring v. R. L. Mathis Certified Dairy Co., 121 Ga. App. 373, 173 S.E.2d 716 (1970), *appeal dismissed*, 91 S.Ct. 192, 400 U.S. 922 (1970). An oral pronouncement of a future hearing date without a subsequent written notice is not proper and adequate notice under the statute. Therefore, Petitioner had not been properly ordered or noticed by the trial court to return for a hearing, a violation of his due process right to receive notice and an opportunity to be heard. As a result of the determination made in his absence, Petitioner has suffered great financial harm.

B. The record before the trial court clearly indicated that Petitioner was unaware of any pending hearings before the trial court thereby requiring the Judge to inquire into Petitioner's non-appearance.

On June 22, 2006, six (6) days before the final hearing on June 28, 2006 was held, and without having prepared an Order as he promised the trial court, Mr. Shriver filed and served on opposing counsel a Motion to Withdraw. Along with the Motion to Withdraw, he filed a notice that stated in paragraph six (6): "**Plaintiff JAY PHILLIP GRUND, is hereby notified that there are presently no court dates set in this matter.**" (Emphasis supplied) Mr. Shriver contemporaneously filed and served on opposing counsel a Consent to Withdraw, which essentially was a signed and notarized affidavit of Petitioner, and contained in unnumbered paragraph four (4): "**I have been informed by Mr. Shriver that there are presently no court dates set in this matter.**" Both the trial court and Respondent's counsel were therefore aware, six (6) days prior to the orally announced hearing that the *pro se* Petitioner had been specifically told that no court dates were scheduled in the case.[3] The trial court

[3] On July 7, 2006, the trial court entered an Order permitting the withdrawal of Mr. Shriver *nunc pro tunc* to June 22, 2006. The certificate of service accompanying the order

had a duty to inquire into Petitioner's non-appearance at the Final Hearing. The lack of notice appeared on the face of the record and thus the Final Order entered against Petitioner based upon a hearing held without notice to Petitioner is properly subject to a Motion to Set Aside.

A discussion of this point of law is found in Taylor v. Chester, 207 Ga. App. 217, 427 S.E.2d 582 (1993). In Taylor, the Court reversed the denial of a motion to set aside due to the lack of notice to the party as follows:

> As this Court has stated in *Shelton v. Rodgers*, 160 Ga.App. 910, 288 S.E.2d 619 (1982), '[a] judgment or order based upon a trial or hearing entered against a party without notice to that party of the trial or hearing is subject to a motion to set aside where the lack of notice appears on the face of the record.' (Cits.) *Id.* at 911, 288 S.E.2d 619. In this case, as in *Shelton*, the record shows that the trial calendar was sent to an incorrect address and was subsequently returned. It further

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indicates that the Order was served upon Mr. Shriver and Respondent's counsel but not on Petitioner. Petitioner was not formally notified by the trial court that the Motion to Withdraw had been granted. Moreover, as noted above, this Order used an improper *nunc pro tunc* designation because no such pronouncement was ever made on that date and therefore the *nunc pro tunc* designation supplied a non-action in violation of Georgia law.

> appears that the failure of the Petitioner to receive notice of the assignment of the case as required by OCGA § 9-11-40 (c) . . . The clerk had a duty to notify the Petitioner of the assignment of his case to the calendar . . . . **In addition, the judge, through a review of the record, should have been cognizant of the returned calendar when he proceeded with trial. 'Under these circumstances, to hold that this lack of notice to appellant is not a nonamendable defect appearing on the face of the record requiring that the judgment against him be set aside under [OCGA § 9-11-60 (d)] would punish appellant for the oversight of the clerk.' *Shelton v. Rodgers*, 160 Ga.App. at 911, 288 S.E.2d 619.**
>
> As the record in this case shows that there was a total lack of notice to the appellant of the assignment of his case to a trial calendar, we find that the trial court erred in denying the motion.

Taylor, 207 Ga. App. at 219 (emphasis supplied.) As clearly set forth in Taylor, the trial judge in the instant case should have reviewed the record and

should have inquired into Petitioner's non-appearance.

Even greater burdens and duties are placed on the trial court and opposing counsel in domestic relations situations, and the burden is even greater when a party is appearing *pro se*, as Petitioner was following the withdrawal of his counsel. This issue was addressed in Crenshaw v. Crenshaw, 267 Ga. 20, 21, 471 S.E.2d 845 (1996) and in James v. James, 275 Ga. 165, 562 S.E.2d 506 (2002).

In Crenshaw, the Supreme Court of Georgia considered the question of what was adequate notice to a *pro se* party. The question involved the adequacy of notice by publication upon a *pro se* party whose counsel had previously withdrawn. The Supreme Court of Georgia held that:

> The parties to the divorce action must be given a reasonable opportunity to be heard on these issues. Additionally, providing pro se parties with reasonable notice of the final hearing is in keeping with the legislative mandate that the trial court consider all the circumstances and render a decision that furthers the best interest of the children.

Crenshaw, 267 Ga. at 21.

The Georgia Supreme Court determined that the trial court's failure to set aside the judgment under O.G.C.A. § 9-11-60(d) was an abuse of discretion and reversed the trial court. Id. As the

Georgia Supreme Court observed in Green v. Green, 263 Ga 551, 437 S.E.2d 457 (1993):

> [The] spirit of cooperation and civility, when taken together with the notions of fundamental fairness that lie at the heart of the principle of due process of law, requires that attorneys, as officers of the court, make a good faith effort to ensure that all parties to a controversy have a full and fair opportunity to be heard. Such an effort may entail, as is already the customary practice of many attorneys, counsel assuming the burden of notifying by mail any unrepresented opposing party when their case appears on a trial calendar.

Id., at 554-555.

In this case, both the trial court and opposing counsel failed in their duties to provide proper notice of hearing. Further, opposing counsel and the trial court, being fully aware that Petitioner had been informed that no hearing was scheduled, failed to inform Petitioner, upon his counsel's filing of the notice of withdrawal as counsel, of the impending court date.

C. The trial court erred by failing to determine, prior to holding a Final Hearing on June 28, 2006, why Petitioner was not present for the hearing.

At the Motion to Vacate hearing on June 27, 2007, when Petitioner testified that his former attorney had notified Petitioner that no hearing was pending, the trial court summarily dismissed his averment and responded: "**Well, then if that is true, Mr. Grund, and I take that with a grain of salt . . .**" However, had the trial court performed its duty and reviewed the record prior to the final hearing, the trial court would have known it was a true statement rather than summarily questioning Petitioner's veracity. The written proof was directly before it, in the record. Such authority as Green, Crenshaw, Taylor (*supra*), and Shelton v. Rogers, 160 Ga. 910, 288 S.E.2d 619 (1982), all support the proposition that the trial court failed in its duty and that Petitioner suffered a due process deprivation.

II. Georgia law is clear that when a party's counsel withdraws, the statutory notice requirement requires notice to the party; otherwise, an order entered when the party fails to appear is subject to be set aside.

Pretermitting the question of the efficacy of the trial court's announcement at the May 22, 2006 hearing, the record clearly indicates that Petitioner had been subsequently instructed by his counsel at that time that no hearings were scheduled in his case. Petitioner was justified in relying on the averments of his former counsel that no hearings were pending and was not at fault whatsoever or negligent in failing to appear.

Exactly on point is Georgia Highway Express, Inc. v. Whaley, 166 Ga. App. 662, 305 S.E.2d 411 (1983), wherein the Georgia Court of Appeals reversed the trial court's order denying a Motion to Set Aside a default judgment entered when the party failed to answer the call of the case for trial. There, the record showed without dispute that the party's counsel had previously withdrawn from the case and had notified the court. In spite of this fact, the only notice of the trial date was sent to the former counsel who made no effort to inform his former client. The Georgia Court of Appeals held: "The notice provided to former counsel was not sufficient to meet the statutory notice requirements set forth in O.C.G.A. § 9-11-40(c). The

Order denying the Motion to Set Aside is consequently reversed, based on the presence of a non-amenable defect apparent on the face of the record." Id., 166 Ga. App. at 662. Similar to Georgia Highway Express, the record here showed without dispute that Petitioner's counsel had withdrawn from the case and notified the court. Furthermore, the record indicates that the withdrawing counsel misled Petitioner into believing that there were no pending hearings. Notice was not published in the hearing calendar nor was notice sent to either Petitioner or Petitioner's counsel.

Thus, if the notice provided to former counsel in Georgia Highway Express was not sufficient to meet the statutory notice requirement, then clearly the notice given here, which was far more deficient, cannot meet the statutory notice requirement. Georgia law is clear "that failure to receive notice of a final hearing constitutes a nonamendable defect on the face of the record, subject to attack." Murphy v. Murphy, 263 Ga. 280, 430 S.E.2d 749 (1993).

III. The trial court erred by using non-W-2 income attributed to Petitioner to calculate Petitioner's child support, depriving him of his property without due process of the law.

The original settlement agreement entered into between the parties, a bargained for contract

in which the Respondent received valuable Home Depot stock options, provided that Petitioner's child support obligation to the extent that it would exceed Eight Hundred Ninety-Six Dollars ($896.00) per month, was to be calculated based only upon twenty-five percent (25%) of his W-2 income. The Settlement Agreement on Page 11 paragraph (e) provides: "It is further agreed that child support shall equal twenty-five (25%) of the Husband's gross income. **Said amount shall be determined based upon a yearly review of the Husband's W-2's on February 15 of each year."** (Emphasis added).

Nevertheless, in the trial court's Final Order, Petitioner's child support obligation was calculated on the basis of his rental income, interest income, dividend income, short term capital gain and long term capital loss. These are not W-2[4] income items and their use in the calculation was a misapplication of the contract and clear error. This is clear error from which the Petitioner must be granted relief.

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[4] This Court is requested to take judicial notice of the fact that "W-2 income" is a term of art and applies only to wage income.

IV. The trial court erred in using hypothetical 2006 rental income to calculate Petitioner's child support.

The evidence presented to the trial court at the June 28, 2006 hearing consisted of only tax returns from 2004 and 2005. There was no competent evidence presented from which the trial court could determine 2006 rental.[5] Respondent's counsel's gratuitous addition of hypothetical amounts in the order submitted to the trial court was unwarranted and Petitioner is entitled to relief from this clear error.

V. Petitioner never received his right to be heard before the arbitrary deprivation of his property, a fundamental requisite of due process and the Fourteenth Amendment.

By failing to give Petitioner adequate and proper notice pursuant to O.C.G.A. § 9-11-40 (c) and by failing to undertake a reasonable inquiry into Petitioner's absence at the hearing where documents in the record clearly showed a lack of proper notice, the trial court denied Petitioner his right to be heard. "For more than a century, the

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[5] Notwithstanding the fact that rental income is not relevant to the computation of child support under the Settlement Agreement as shown above.

central meaning of procedural due process has been clear: 'Parties whose rights are to be affected are entitled to be heard; and in order that they may enjoy that right, they must first be notified.'" Fuentes v. Shevin, 407 U.S. 67, 80 (1982) (citations omitted). "The right to prior notice and a hearing is central to the Constitution's command of due process." United States v. James Daniel Good Real Prop., 510 U.S. 43, 53 (1993). "This right to be heard has little reality or worth unless one is informed that the matter is pending and can choose for himself whether to appear or default, acquiesce or contest." Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 314 (1950). Because Petitioner was not given adequate notice, he was deprived of his right to be heard which directly deprived him of his property by arbitrarily increasing his child support obligations to over One Hundred Thousand Dollars ($100,000.00) by using income outside of the Settlement Agreement. This Court has made clear the utmost importance of receiving notice before a deprivation in a domestic proceeding:

> In disposing of the first issue, there is no occasion to linger long. It is clear that failure to give the petitioner notice of the pending adoption proceedings violated the most rudimentary demands of due process of law. "Many controversies have raged about the cryptic and abstract

> words of the Due Process Clause, but there can be no doubt that, at a minimum, they require that deprivation of life, liberty or property by adjudication be preceded by notice and opportunity for hearing appropriate to the nature of the case." *Mullane v. Central Hanover Bank & Tr. Co.*, 339 U. S. 306, at 339 U. S. 313. "An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections. *Milliken v. Meyer*, 311 U. S. 457; *Grannis v. Ordean*, 234 U. S. 385; *Priest v. Board of Trustees of Town of Las Vegas*, 232 U. S. 604; *Roller v. Holly*, 176 U. S. 398."

Armstrong v. Manzo, 380 U.S. 545, 550 (1965).

At the core of this appeal is that the trial court did not afford Petitioner the opportunity to present his objections to the substantively unfair and arbitrary use of non-W-2 income and hypothetical rental income in determining his child support obligation, a clear deprivation of his property and a violation of his Due Process rights.

The constitutional right to be heard is a basic aspect of the duty of government to follow a fair process of decision making when it acts to deprive a person of his possessions. The purpose of this requirement is not only to ensure abstract fair play to the individual. Its purpose, more particularly, is to protect his use and possession of property from arbitrary encroachment – to minimize substantively unfair or mistaken deprivations of property, a danger that is especially great when the State seizes goods simply upon the application of and for the benefit of a private party. So viewed, the prohibition against the deprivation of property without due process of law reflects the high value, embedded in our constitution and political history, that we place on a person's right to enjoy what is his, free of governmental interference. [cit.]

...For when a person has an opportunity to speak up in his own defense, and when the State must listen to what he has to say, substantively unfair and simply mistaken deprivations of property interests can be prevented. It has long

> been recognized that "fairness can rarely be obtained by secret, one-sided determination of facts decisive of rights.... [And n]o better instrument has been devised for arriving at truth than to give a person in jeopardy of serious loss notice of the cases against him and opportunity to meet it." [cit.]

Fuentes, 407 U.S. at 80-81 (citations omitted). See also James Daniel Good Real Prop., 510 U.S. at 48. Here, the trial court's failure to give notice to Petitioner, resulting in the unfair determination of his child support obligations, violates this high value held dear by this Court and essential to the freedoms enjoyed in this country.

Moreover, the subsequent hearing on the Motion to Set Aside did not resolve the constitutional infirmity resulting from the failure to provide Petitioner notice of the Final Hearing. Due to the swapping of burdens, Petitioner faces an uphill battle of overcoming an adverse decree. This Court continued discussing this point in Armstrong, stating:

> The burdens thus placed upon the petitioner were real, not purely theoretical. For "it is plain that where the burden of proof lies may be decisive of the outcome." *Speiser v. Randall*, 357 U. S. 513, 357 U. S. 525. Yet these burdens would not have been imposed upon him had he been

> given timely notice in accord with the Constitution.
>
> A fundamental requirement of due process is "the opportunity to be heard." *Grannis v. Ordean*, 234 U. S. 385, 234 U. S. 394. It is an opportunity which must be granted at a meaningful time and in a meaningful manner. The trial court could have fully accorded this right to the petitioner only by granting his motion to set aside the decree and consider the case anew. Only that would have wiped the slate clean. Only that would have restored the petitioner to the position he would have occupied had due process of law been accorded to him in the first place. His motion should have been granted.

Armstrong, 380 U.S. at 551-52.

Moreover, Petitioner's right to be heard would only be made meaningful if he had the opportunity to be heard and object before the trial court entered its Order increasing his child support obligations. It is fundamental that the right to notice and an opportunity to be heard must be granted at a meaningful time and in a meaningful manner. See Hamdi v. Rumsfeld, 542 U.S. 507 (2007).

It should also be noted that basis of the objections, or the lack thereof, have no holding on the right to be heard.

> "To one who protests against the taking of his property without due process of law, it is no answer to say that, in his particular case, due process of law would have led to the same result because he had no adequate defense upon the merits." [cit.] It is enough to invoke the procedural safeguards of the Fourteenth Amendment that a significant property interest is at stake, whatever the ultimate outcome...

Fuentes, 407 U.S. at 87 (citation omitted).

This case concerns the very essence of the liberty provided for in the Constitution; that one should not have his life, liberty or property arbitrarily deprived by the government without first receiving an opportunity to be heard. To remedy this arbitrary deprivation in violation of due process, Petitioner respectfully requests that this Petition for Writ of Certiorari be GRANTED.

Respectfully Submitted,

s/ Douglas J. Davis
Douglas J. Davis
Counsel of Record
Georgia Bar No. 207950
BELLI, WEIL, GROZBEAN & DAVIS, LLP
8010 Roswell Road
Suite 200
Atlanta, Georgia 30350
770-993-3300

SUPREME COURT OF GEORGIA

Case No. S09D1707 Atlanta, July 28, 2009

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed:

JAY PHILLIP GRUND v. TRACEY ANN SPRINKLE

Upon consideration of the Motion for Reconsideration filed in this case, it is ordered that it be hereby denied.

Hunstein, C.J., Carley, P.J., Benham, Thompson, Hines and Melton, JJ., concur.

SUPREME COURT OF THE STATE OF GEORGIA

Clerk's Office, Atlanta

I hereby certify that the above is a true extract from the minutes of the Supreme Court of Georgia.

Witness my signature and the seal of said court hereto affixed the day and year last above written.

s/ Therese S. Barnes, Clerk.

SUPREME COURT OF GEORGIA
Case No. S09D1707 Atlanta, July 17, 2009

The Honorable Supreme Court met pursuant to adjournment.
The following order was passed:

JAY PHILLIP GRUND V. TRACEY ANN SPRINKLE

From the Superior Court of Cobb County.

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby denied.

Hunstein, C. J., Carley, P. J., Benham, Thompson, Hines and Melton, JJ., concur.
0511005633

Seal:
Supreme Court of the
State of Georgia
1845

SUPREME COURT OF THE STATE OF GEORGIA
Clerk's Office, Atlanta

I hereby certify that the above is a true extract from the minutes of the Supreme Court of Georgia.

Witness my signature and the seal of said court hereto affixed the day and year last above written.

s/ Therese S. Barnes, Clerk.

Court of Appeals
Of the State of Georgia

ATLANTA, June 26, 2009

The Court of Appeals hereby passes the following order:

A09D0396. JAY PHILLIP GRUND v. TRACEY ANN SPRINKLE.

Jay Phillip Grund seeks discretionary review of the denial of his motion to set aside an order modifying his child support obligation set forth in his final divorce decree. Under the Georgia Constitution of 1983, Art. VI, Par. III (6), the Supreme Court has appellate jurisdiction over "[a]ll divorce and alimony cases." In Georgia, child support is a form of alimony. *Smith v. Smith*, 254 Ga. 450, 451 (330 SE2d 706) (1985). As the underlying subject matter in this case involves child support, this Court lacks jurisdiction over this application. See, e.g., *Upchurch v. Smith*, 281 Ga. 28 (635 SE2d 710) (2006); *Falkenberry v. Taylor*, 278 Ga. 842 (607 SE2d 567) (2005); *Staffon v. Staffon*, 277 Ga. 179 (587 SE2d 630) (2003); *Hulett v. Sutherland*, 276 Ga. 596 (581 SE2d 11) (2003); *Wingard v. Paris*, 270 Ga. 439 (511 SE2d 167) (1999). Accordingly, this application is *TRANSFERRED* to the Supreme Court of Georgia.

Seal:
COURT OF APPEALS
OF THE STATE OF GEORGIA

1906
Court of Appeals of the State of Georgia
Clerk's Office, Atlanta **June 26 2009**
I certify that the above is a true extract
from the minutes of the Court of Appeals of Georgia
Witness my signature and the seal of
said court hereto affixed the day and year
last above written.
s/ William L. Martin III, Clerk

Filed in Office May-05-2009 13:42:50
ID# 2009-0068281-CV

s/ Jay C. Stephenson
Jay C. Stephenson
Clerk of Superior Court Cobb County

IN THE SUPERIOR COURT OF COBB COUNTY
STATE OF GEORGIA

TRACEY ANN SPRINKLE,:	
	:
Plaintiff,	: CIVIL ACTION
	: FILE NO.:
v.	: 05-1-10056-33
	:
JAY PHILLIP GRUND,	:
	:Related to CAFN:
Defendant.	: 05-1-10056-33
	:

ORDER ON MOTION TO SET ASIDE JUDGMENT

On the 22nd day of April, 2009, Defendant's Motion to Set Aside Judgment came on for hearing. Plaintiff, TRACEY ANN SPRINKLE, appeared in person by attorney of record, F. Marian Weeks. Defendant, JAY PHILLIP GRUND*, appeared ~~in person and~~ by attorney. The Court, after considering the evidence and argument of counsel, makes the following orders, to-wit:

IT IS ORDERED, ADJUDGED AND DECREED that Defendant's Motion to Set Aside Judgment is hereby DENIED in all things.

SO ORDERED this 1st day of May, 2009.

s/ James Bodiford
HONORABLE JAMES BODIFORD, JUDGE
SUPERIOR COURT OF COBB COUNTY

Prepared by:
s/ F. Marian Weeks
F. Marian Weeks
State Bar of Georgia No. 745675
367 Marietta GA 30060
770-218-2600

* Mr. Grund DID NOT APPEAR. s/ JB

Filed in Office May-05-2009 13:42:50
ID# 2007-0085746-CV
Page 1
s/ Jay C. Stephenson
Jay C. Stephenson
Clerk of Superior Court Cobb County

IN THE SUPERIOR COURT OF COBB COUNTY
STATE OF GEORGIA

JAY PHILLIP GRUND,	:	
	:	
Plaintiff,	:	CIVIL ACTION
v.	:	
	:	FILE NO.05-1-10056-33
TRACEY ANN SPRINKLE,:		
	:	
Defendant.	:	

FINAL ORDER

The above styled matter having come before the Court on its regular calendar as a result of the Plaintiff's Motion to Vacate/ Rehearing the Court's previous Order of June 28, 2006. Both parties were present and represented by counsel, both parties presented argument that was heard by the Court, and as a result it is Ordered as follows:

The Order of this Court in the above styled matter signed February 18, 2007, but file stamped February 19, 2007, nunc pro tunc to June 28, 2006 shall remain in full force and effect, and the Plaintiff's Motion to Vacate/Rehearing of that Order is hereby denied, and the parties are Ordered to abide by that Order.

This 26th day of June, 2007.
Nunc pro tunc to May 2, 2007.

s/ James Bodiford
JAMES G. BODIFORD, Judge
Superior Court of Cobb County

(Signatures Continued on Following Page)

Presented by:
s/ F. Marian Weeks
F. Marian Weeks, Esq.
Attorney for Defendant
State Bar of Georgia No. 745675

367 Atlanta Street
Marietta GA 30060
770-218-2600

Approved as to form:
s/ Douglas Davis, by F. Marian Weeks, with express permission
Douglas Davis, Esq.
State Bar of Georgia No. 207950

Belli, Weil, Grozbean & Davis, LLP
8101 Roswell Road, Suite 200
Atlanta, GA 30350
770-993-3300

Filed In Office Feb-19-2007 14:17:49
ID# 2007-0022927-CV

s/ Jay C. Stephenson
Jay C. Stephenson

Clerk of Superior Court Cobb County

IN THE SUPERIOR COURT OF COBB COUNTY
STATE OF GEORGIA

JAY PHILLIP GRUND,	
Plaintiff,	CIVIL ACTION FILE NO.:
v.	05-1-10056-33
TRACEY ANN SPRINKLE,	
Defendant.	

FINAL ORDER

Pursuant to the calendaring announcement made in this Court on May 22, 2006, the within and foregoing matter came on for hearing on June 28, 2006, Defendant being present and represented by Carla H. Bright, Esq., Plaintiff not being present, and it appearing that Plaintiff's counsel, Mark O. Shriver, Esq., had duly filed and served his Motion to Withdraw as Counsel of Record for Plaintiff, which is hereby granted instanter, upon consideration of the pleadings, testimony and

evidence presented, the Court hereby **FINDS** and **ORDERS** as follows:

1. Plaintiff's counsel submitted copies of his client's 2003, 2004 and 2005 federal income tax returns to Defendant's counsel as required in this Court's Order dated May 22, 2006.

2. At the time of their divorce in 2000, the parties' Final Judgment and Decree or Divorce required Plaintiff to pay Defendant minimal child support of $896.00 per month (based on his income of $43,000 per year) or 25% of his gross annual income, whichever was greater.

3. (a) Plaintiff's 2003 federal income tax return shows Plaintiff's total income was less than $43,000 and therefore no additional child support is due for 2003.

(b) Plaintiff's 2004 federal income tax return reflected net rental income of $101,494; interest income of $2,131; divided income of $10,101; $6,352 short-term capital gain; and $34,268 long-term capital loss [including $82,009 long term capital loss taken for sale of inherited Merck stock]. Resulting in $167,819 actual income. Plaintiff owes Defendant additional child support for 2004 of $31,204.75.

(c) Plaintiff's 2005 federal income tax return reflected net rental income on Chicago property of $106,912 and net rental income of Cobb County, GA property excluding depreciation of $21,986; interest income of $2,609; divided income of $14,736; $11,907 short-term capital gain; and $188,491 net proceeds received on the sale of Meadow Grove property, resulting in $347,532 actual income. Additional child support owed by Plaintiff to Defendant for 2005 is $76,131.00.

(d) Calculating Plaintiff's January 2006 net rental income (excluding depreciation only), shows his income was $12,909. Additional child support owed to Defendant for January 2006 is $2,331.00.

Defendant-Mother is hereby awarded $109,666.75 additional child support for 1/1/2004 – 1/31/2006 pursuant to the self-escalating child support clause in their divorce decree.

4. Plaintiff's net rental income in 2006 is established as $12,909 per month and average gross income/dividend earnings of $1,232 per month, totaling **$14,141** of income per month. Defendant's net monthly income is **$2,256.** Pursuant to their prior agreement in the above styled action, child support is set at 20% per child. Plaintiff-Father shall pay Defendant-Mother $2,828 per month for Zachary. Defendant-Mother shall pay Plaintiff-Father $246.00 per month child support for Joshua. Child support payments as to each child shall commence on February 1, 2006, and continue on the first day of each month thereafter, until that child reaches the age of 18, dies, marries, or becomes emancipated, whichever first occurs, at which time the child support as to that child shall be terminated. Provided, however, if either child becomes 18 years of age and has not been previously married or emancipated, and is enrolled in and attending an accredited secondary school on a full-time basis, then the support for each such child shall continue until he completes secondary school, provided that such support shall not be required after the child attains 20 years of age. Defendant-Mother's monthly payments to Plaintiff-Father shall be deducted from the child

support she is to receive, resulting in Plaintiff paying the sum of $2,582 per month to Defendant.

5. Plaintiff-Father is found to be in willful contempt for his failure to timely provide Defendant with copies of his 2003, 2004 and 2005 tax returns, his failure to comply with the counseling requirements for the children previously established by this Court, and his failure to provide current insurance identification cards on the children to his ex-wife. Defendant is hereby awarded the sum of $4,775.00 as attorney's fees, to be paid by Plaintiff directly to Browning & Smith, LLC, 31 Atlanta Street, Suite 210, Marietta, GA 30060.

FURTHER ORDERED that the parties shall comply with each and every provision of the within Order and the terms of all other Orders previously entered in any prior litigation between the parties not in conflict herewith.

SO ORDERED, this 18th day of February, 2007, *nunc pro tunc* June 28, 2006.

s/ James Bodiford
JAMES G. BODIFORD, Judge
Cobb County Superior Court

Prepared by:
s/ Carla H. Bright
CARLA H. BRIGHT
Georgia Bar No. 258000
BROWNING & SMITH, LLC
Attorneys for Defendant-Mother
31 Atlanta Street, Suite 201
Marietta, GA 30060
770/424-1500

CERTIFICATE OF SERVICE

This is to certify that I have this date placed a copy of the attached order in the United States Mail to the following:

Carla Bright
31 Atlanta Street
Suite 201
Marietta, Ga. 30060

Mark Shriver
180 Parkway 575
Suite 140
Woodstock, Ga. 30188

Douglas Davis
8010 Roswell Road
Suite 200
Atlanta, Ga. 30350

This the 19th day of February, 2007.

s/ Jan Porter
Jan Porter
Administrative Assistant to
Judge James G. Bodiford

Filed in Office Feb-19-2007 14:13:02
ID# 2007-0022921-CV
Page 1
s/ Jay C. Stephenson
Jay C. Stephenson
Clerk of Superior Court Cobb County

IN THE SUPERIOR COURT OF COBB COUNTY
STATE OF GEORGIA

JAY PHILLIP GRUND,	
Plaintiff,	CIVIL ACTION FILE NO.:
v.	05-1-10056-33
TRACEY ANN SPRINKLE,	
Defendant.	

TEMPORARY ORDER

Defendant's Application for Citation for Contempt and amendment thereto having come on for hearing before the undersigned on May 22, 2006, Plaintiff being present and represented by Mark O. Shriver, Esq., and Defendant being present and represented by Carla H. Bright, Esq., by agreement of the parties, the terms of the settlement read into the record that day and memorialized in the Transcript of Proceedings

attached hereto and incorporated herein as Exhibit "A" are hereby made the Order of this Court.

FURTHER ORDERED that the parties shall comply with each and every provision of the within Temporary Order and the terms of all Orders previously entered in any prior litigation between the parties not in conflict herewith.

SO ORDERED, this 18th day of February, 2007, *nunc pro tunc* May 22, 2006.

s/ James Bodiford
James G. Bodiford, Judge
Cobb Superior Court, C.J.C.

Prepared by and consent to on behalf
of Defendant Mother as announced and
recorded by the Court Reporter in attendance:

s/ Carla H. Bright
CARLA H. BRIGHT
Georgia bar No. 258000
BROWNING & SMITH, LLC
Attorneys for Defendant-Mother
31 Atlanta Street, Suite 201
Marietta, GA 30060
770/424-1500

Filed In Office Jul-10-2006 10:20:31
ID# 2006-0086106-CV
Page 1
s/Jay C. Stephenson
Jay C. Stephenson
Clerk of superior Court of Cobb County

IN THE SUPERIOR COURT OF COBB COUNTY
STATE OF GEORGIA

JAY PHILLIP GRUND,	§	
	§	
Plaintiff,	§	
	§	CIVIL ACTION FILE
-versus-	§	
	§	NO. 05-1-10056-33
	§	
TRACEY ANN SPRINKLE,	§	
	§	
Defendant.	§	

ORDER

The Motion to Withdraw as Counsel of Record for the Plaintiff having been presented and duly filed with the Clerk of Superior Court, with proper notice having been given to the Plaintiff and all other requirements of Superior Court Rule 4.3 having been satisfied,

IT IS Hereby ORDERED, that MARK O. SHRIVER, IV shall be withdrawn as attorney of record for the plaintiff in the above of record for the

Plaintiff in the above referenced case. *NUNC PRO TUNC June 22, 06*

SO ORDERED, this 7th day of ~~June~~ (*July*), 2006.

s/ James G. Bodiford

JUDGE, SUPERIOR COURT
OF COBB COUNTY
COBB JUDICIAL CIRCUIT

Prepared & submitted by:

s/ Mark O. Shriver, IV

MARK O. SHRIVER, IV
Georgia Bar No. 644735
SHRIVER & GORDON, P.C.
301 Creekstone Ridge
Woodstock, GA 30188
(770) 926-7326

CERTIFICATE OF SERVICE

This is to certify that I have this date placed a copy of the attached order in the United States Mail to the following:

Mark Shriver, IV
301 Creekstone Ridge
Woodstock, Ga. 30188

Carla Bright
31 Atlanta, Street
Suite 201
Marietta, Ga. 30060

This the 10th day of July, 2006

s/ Jan Porter

Jan Porter
Administrative Assistant to
Chief Judge James G.
Bodiford

Filed In Office Jun-22-2006 12:20:44
ID# 2006-0079058-CV
EXHIBIT "B" Page 1
s/ Jay C. Stephenson
Jay C. Stephenson
Clerk of superior Court of Cobb County

IN THE SUPERIOR COURT OF COBB COUNTY
STATE OF GEORGIA

JAY PHILLIP GRUND, Plaintiff	)
	)CIVIL ACTION FILE
v.	)
	) NO.:05-1-10056-33
TRACEY ANN SPRINKLE, Defendant.	)

CONSENT TO WITHDRAW

I herby provide MARK O. SHRIVER, IV, Attorney at Law, with my consent to withdraw from the above matter.

I herby waive all notice requirements under Uniform Superior court Rule 4.3, including the usual ten (10) day period in which I can object to Mr. Shriver's withdrawal.

I hereby request the Superior Court judge to immediately release MARK O. SHRIVER, IV and the law firm of SHRIVER & GORDON, P.C. as attorneys of record.

I have been informed by Mr. Shriver that there are presently no court dates ser in this matter.

I understand and realize that I mist immediately inform the Clerk of either my address, if I proceed unrepresented, or the address of my new attorney.

I accept all responsibility for my case from the *19* day of June, 2006, at *12:30* o'clock *P* .M. and forward, and my Consent to Withdrawal is effective from this date and time.

s/ Jay Phillip Grund

JAY PHILLIP GRUND

Sworn to and subscribed
Before me on this 19
day of June, 2006.

s/ Ladonna Hickey

NOTARY PUBLIC
My commission expires:

10/2/09

Filed in Office June-22-2006 12:20:44
ID# 2006-0079056-CV
Page 1
s/ Jay C. Stephenson
Jay C. Stephenson
Clerk of Superior Court Cobb County

IN THE SUPERIOR COURT OF COBB COUNTY
STATE OF GEORGIA

TRACEY ANN SPRINKLE,:		
	:	
Plaintiff,	:	CIVIL ACTION FILE
	:	
-versus-	:	NO.: 05-1-10056-33
	:	
JAY PHILLIP GRUND,	:	
Defendant.	:	

MOTION TO WITHDRAW

COMES NOW MARK O. SHRIVER, IV, Attorney for the Plaintiff in the above referenced action, who files this Motion to Withdraw, as counsel, allowing said attorney to withdraw as counsel for Plaintiff. In support of said motion, the following is shown to this Court:

1.

The undersigned attorney has provided Plaintiff with a copy of this Motion to Withdraw, together with the Notification of Withdrawal of Counsel attached hereto as Exhibit "A", at least ten (10) days prior to submitting notice of this request to the Court.

2.

Plaintiff has provided counsel with his Consent to Withdraw which is attached hereto as Exhibit "B".

3.

Opposing attorney, Carla H. Bright, whose address is 31 Atlanta Street, Suite 201, Marietta, GA 30060, has been given written notice of this Motion.

WHEREFORE, the undersigned attorney requests that an Order be entered allowing him to withdraw as attorney of record for the Plaintiff in the above styled action.

This 19 day of June, 2006.

s/ Mark O. Shriver, IV
MARK O. SHRIVER, IV
Attorney for Plaintiff
Georgia State Bar No. 644735

SHRIVER & GORDON, P.C.
301 Creekstone Ridge
Woodstock, GA 30188
(770) 926-7326

Filed in Office June-22-2006 12:20:44
ID# 2006-0079057-CV
Page 1
s/ Jay C. Stephenson
Jay C. Stephenson
Clerk of Superior Court Cobb County

IN THE SUPERIOR COURT OF COBB COUNTY
STATE OF GEORGIA

JAY PHILLIP GRUND,	:
Plaintiff,	: CIVIL ACTION
	:
-versus-	: FILED NO
	: 05-1-10056-33
TRACEY ANN SPRINKLE,	:
Defendant.	:

NOTIFICATION OF WITHDRAWAL OF COUNSEL

COMES NOW MARK O. SHRIVER, Attorney for JAY PHILLIP GRUND, Plaintiff in the above styled action, who has filed his Motion to Withdraw as counsel, and in accordance with Uniform Court Rule 4.3, hereby informs JAY PHILLIP GRUND of the following information.

1.

MARK O. SHRIVER, IV desires to withdraw from representing JAY PHILLIP GRUND in the above styled action. JAY PHILLIP GRUND has consented to MARK O. Shriver, IV withdrawal from representing him in the above styled matter.

2.

The Superior Court of Cobb County will retain jurisdiction of the above styled action.

3.

Plaintiff, **JAY PHILLIP GRUND**, has the burden of keeping the Court informed respecting where notices, pleadings, or other papers may be served.

4.

Plaintiff, **JAY PHILLIP GRUND**, has the obligation to prepare for trial or have other counsel prepare for trial.

5.

If Plaintiff, **JAY PHILLIP GRUND**, fails or refuses to meet these obligations and burdens, he may suffer adverse consequences.

6.

Plaintiff, **JAY PHILLIP GRUND**, is hereby notified that there are presently no court dates set in this matter.

7.

The dates of any scheduled proceedings, including trial, and the holding of such proceedings will not be affected by the withdrawal of MARK O. SHRIVER, IV as attorney for Plaintiff.

8.

The service of notices may be made upon Plaintiff, **JAY PHILLIP GRUND**, at the last known address which is 4162 McClesky Road, Marietta, GA 30066.

9.

Plaintiff, **JAY PHILLIP GRUND**, has ten (10) days from the date of this notice to file any objection to the withdrawal of MARK O. SHRIVER, IV with the Superior Court of Cobb County, and serve said objection upon the attorney whose address is shown below.

This 19 day of June, 2006.

s/ Mark O. Shriver, IV
MARK O. SHRIVER, IV
Attorney for Plaintiff
Georgia Bar No. 6744735

SHRIVER & GORDON, P.C.
301 Creekstone Ridge
Woodstock, GA 30188
(770)926-7326

Filed in Office Oct-02-2000 09:24am
COBB COUNTY GA.
ID# 2000-0103219-CV
Page 1
s/ Jay C. Stephenson
Jay C. Stephenson
Clerk of Superior Court Cobb County

IN THE SUPERIOR COURT OF COBB COUNTY
STATE OF GEORGIA

TRACEY ANN GRUND,	)
Plaintiff	)
	)CIVIL ACTION
v.	)
	)FILE NO.: 99-1-7729-33
JAY PHILLIP GRUND,	)
Defendant.	)

SETTLEMENT AGREEMENT

THIS AGREEMENT made and entered into this 29th day of September, 2000, by and between TRACEY ANN GRUND, hereinafter referred to as the Wife, and JAY PHILLIP GRUND, hereinafter referred to as the Husband.

WITNESSETH

WHEREAS, the said parties are Husband and Wife; and

WHEREAS, the said parties are living in a *bona fide* state of separation, having separated on or about September 25, 1999;

WHEREAS, the Wife has or will file in the Superior Court of Cobb County, Georgia, a Complaint for Divorce under the above style; and;

WHEREAS, the parties have defined their respective rights and obligations with respect to custody and visitation of their minor Children, alimony, child support and a division of their assets and so forth;

NOW, THEREFORE, in consideration of these premises, and the mutual promises and covenants hereinafter made, and for other good and valuable consideration, the receipt of which is hereby acknowledged, the parties do covenant and agree as follows:

1. **CONSIDERATION.** The consideration of this Agreement is the benefits flowing to each other by virtue hereof and the mutual promises and agreements contained herein. The adequacy of the consideration for the agreements contained herein is expressly stipulated and admitted by the parties.

2. **EQUITABLE DIVISION OF PROPERTY.** The parties hereto agree that the transfers of property are pursuant to a division of the equitable interest in such property and said transfers are not in settlement of any alimony or marital property rights. The division of the liquid assets, personal property and real property, are all in the nature of a property settlement. It is the intent of the parties that the division of the liquid assets and personal property are divided on an equal basis. It is specifically the intent of the parties that the division of said property is not to result in a taxable event to either the Husband or the Wife and said division is not to be treated by the Internal Revenue Service as alimony, but only as property division.

It is specifically acknowledged and agreed that the parties hereto have amicably divided the household furniture, furnishings and assets acquired during the marriage of the parties.

The wife shall have full title, possession, and use of the marital residence, also known as 4109 Barbara Drive, Marietta, Cobb County, Georgia. The Husband agrees to execute and deliver to the Wife a Quitclaim Deed for the marital home place at or before the final decree of divorce is granted.

The Husband shall have full title, possession, and use of the residence at 4162 McClesky Drive, Marietta, Cobb County, Georgia.

Each party does hereby quitclaim and convey all of his or her right, title and interest to and in such property now in the possession of the other party.

The Husband shall provide the Wife with the title to the 1984 Plymouth Voyager automobile which is in her possession, and the Wife shall have all right, title and interest in and to the 1984 Plymouth Voyager, and shall be responsible for the maintenance and upkeep thereon.

The Husband shall have all right, title and interest in and to the 1988 Plymouth Horizon automobile and shall be responsible for the maintenance and upkeep thereon.

Unless otherwise expressly set forth herein the title to such property shall vest in the respective party, subject to any indebtedness owed thereon and the respective party shall indemnify and hold the other party harmless from said indebtedness.

3. **LEGAL CUSTODY AND CONTROL OF THE MINOR CHILDREN**. The parties shall have joint legal custody of the minor children, and shall confer in good faith on all matters of importance

pertaining to the education, religious training, and medical care of the minor Children as follows:

(a) Except as agreed otherwise, after good faith consultation, the Children shall be exposed to religious beliefs and practices of both parents and shall be entitled to attend religious ceremonies and events of either at times when in the when in the physical custody of either. Furthermore, the Court encourages each parent to allow the Children to accompany the other parent to special events of religious significance even when the Children would not otherwise be in the physical custody of that parent;

(b) In the case of a medical emergency, the party who has the Children at the time of the emergency may determine the treatment needed and shall notify the other party as soon as possible, but in cases within six (6) hours. As to non-emergency medical care and major educational decisions, if good faith consultation does not result in decision by agreement, the primary physical custodian shall have the ultimate decision making authority;

(c) Each party shall be entitled to complete, detailed information from any pediatrician, general or other physician, dentist, psychiatrist, psychologist, consultant, or other specialist, hospital or other medical facility attending or who has at any time attended the Children for any reason whatsoever and to be furnished with copies of any reports, including reports given by them, or any of them, to the other parent;

(d) Each party shall be entitled to complete, detailed information from any teacher or school giving instructions to the Children, or from any school the Children may attend, and to be furnished with copies of all reports given by them

to the other parent, inclusive of school calendar and activity information;

(e) It is intended that by exhibiting this provision of this Final Judgment and Decree that each parent shall be entitled to gain access to all medical and school records.

4. **PHYSICAL CUSTODY OF THE MINOR CHILDREN.** The Wife shall have both temporary and permanent physical custody of the minor Children of the parties, to-wit: JOSHUA PHILLIP GRUND, born October 26, 1991 and ZACHARY JOSEPH GRUND, born August 8, 1994. The permanent physical custody vested in the Wife shall be subject to reasonable visitation rights of the Husband as hereinafter set forth.

5. **VISITATION SCHEDULE.** The Husband may visit with the Children at any reasonable time and for such periods of time as the Wife and Husband shall Mutually Agree upon, provided however, the Husband gives the Wife twenty-four (24) hours advance notice of intent to exercise said visitation. The parties have agreed to visitation every other weekend, one day visit out of the week following the weekend visitation, and the parties shall share birthdays, holidays and vacations. In the event a dispute arises or the parties hereto are unable to agree with respect to visitation, then the following schedule shall control:

(a) The Husband shall have the right to have the minor Children visit away from the home of the Wife every 2nd and 4th weekend of each month from 6:00 p.m. on Friday until 6:00 p.m. on Sunday. This paragraph shall be interpreted subject to subparagraphs c, d, e, f, g, h, i, j, k, l, m, and n,: to wit, if a holiday falls on the weekend visitation the holiday visitation schedule prevails;

(b) The Husband shall have the right to have the minor Children visit during the summer school vacation for a period of four (4) weeks. Said weeks may be successive or, depending upon agreement between the parties, may be split. In the event the summer visitation consists of four (4) successive weeks, the Wife shall have the right to visit with said Children during said four (4) week period from 6:00 p.m. on Friday until 6:00 p.m. on Sunday on the weekends following the first and third weeks of said summer visitation. The Husband shall give the Wife at least four (4) weeks advance notice of intent to exercise said summer visitation;

(c) The Husband shall be entitled to have the minor Children visit with the Husband from 6:00 p.m. on the Friday immediately preceeding Father's Day until 9:00 p.m. on Father's Day each year, notwithstanding any other visitation rights set forth herein. Said minor Children shall remain with the wife for the weekend of Mother's Day each year, notwithstanding any other visitation rights set forth herein;

(d) The Husband shall have the right to have the minor Children visit on odd-numbered years from 6:00 p.m. on Wednesday immediately preceeding Thanksgiving until 6:00 p.m. on Sunday immediately following Thanksgiving. The Wife shall have the right to have the minor Children on even-numbered years from 6:00 p.m. on Wednesday immediately preceding Thanksgiving until 6:00 p.m. on Sunday immediately following Thanksgiving;

(e) The Husband shall have the right to have the minor Children visit on the following major holidays on even-numbered years: President's Day, Easter, July 4th and Veteran's Day. The Husband

shall be entitled to the minor Children on odd-numbered years on the following major holidays: Martin Luther King, Jr., Memorial Day and Labor Day. Visitation shall begin at 6:00 p.m. the day preceding said holiday until 7:00 p.m. the day of said holiday. In the event the holidays are on a Monday, visitation shall begin at 6:00 p.m. the Friday preceding the holiday until 7:00 p.m. the day of the holiday, notwithstanding any other visitation rights set forth herein. The Wife shall be entitled to the Children on the alternate years on the above-referenced holidays, notwithstanding any other visitation rights set forth herein;

(f) The Husband shall have the right to have the minor Children visit on odd-numbered years from 6:00 p.m. on December 18th until 1:00 p.m. on December 25th, and on even-numbered years from 1:00 p.m. on December 25th until 6:00 p.m. on January 2nd;

(g) The Husband shall have the right to have the minor Children visit on even-numbered years from 6:00 p.m. on Friday immediately preceding spring break vacation (according to the school break) until 6:00 p.m. on Friday immediately preceding spring break vacation (according to the school break) until 6:00 p.m. on Sunday prior to the commencement of school;

(h) The Husband shall have the right to telephone visitation on Tuesday of each week, commencing between 7:30 p.m. and 8:00 p.m. The Wife shall have the same right should visitation extend over a one-week period;

(i) Husband and Wife agree to engage in no illegal or immoral behavior while either has custody of the minor children. Neither party will allow a member of the opposite sex (not related to

the party) to remain in the home past midnight while the minor children is or are in their custody.

(j) The above-mentioned visitation shall in no way interfere with the Children's school schedule without the mutual consent of both the Husband and the Wife;

(k) The Husband shall notify the Wife before noon on Thursday preceding all weekends that visitation rights shall be exercised. The Wife agrees to have the Children ready at the time designated in the notification. In the even the Husband cannot exercise planned visitation, the parent will be notified immediately;

(l) Both parties recognize that it is in the best interest of the Children that the visitation periods remain flexible in order to allow the children to participate in planned events, such as athletic events, school activities or other similar participatory activities, and the parties agree that the Husband's rights of visitation set forth herein may be amended and modified to suit the particular needs and circumstances of the parties and/or the Children;

(m) The Husband shall be responsible for arrangements to pick up the minor Children for the commencement and conclusion of each visitation period;

(n) Both parties acknowledge that they understand the term "week" to mean seven calendar days.

6. **ENUNCIATION OF PARENTAL RIGHTS AND OBLIGATIONS.**

(a) The parties acknowledge that this Settlement Agreement cannot provide for every possible contingency with respect to visitation of the Children. In this regard, the parties agree to

cooperate and consult with one another so as to allow the Husband to visit with the Children as often as possible;

(b) The parties shall refrain from committing any act of harassment toward one another, and shall at all times conduct themselves in a manner of peace and tranquility toward on another. The parties shall further refrain from any conduct intended to degrade the other party while in the presence of the Children;

(c) Each party shall at all times keep the other informed of his or her place of residence, his or her place of employment, and his or her home phone number and work phone number, and shall promptly notify the other of any change should it occur;

(d) The no-custodial parent will not remove the Children from the State of Georgia without the express written consent and permission of the other party;

(e) Neither party shall attempt to influence the Children not to love or respect the other parent, nor shall they encourage or allow any third person to influence the Children not to love or respect the other parent;

(f) Each party shall keep the other informed as to the health and location of the Children, including an address and phone number where the Children may be reached, while the Children are in that party's custody.

7. **CHILD SUPPORT**

(a) The parties hereto do acknowledge that the divorce decree to be rendered by the Court in this proceeding shall be subject to the requirements of O.C.G.A. § 19-5-12. Based upon O.C.G.A. § 19-5-12, the parties hereto do expressly agree:

1. The gross income of the father is $43,000.10 per year;

2. The gross income of the mother is $0.00 dollars per year;

3. In this case, child support is being determined for two (2) Children;

4. The applicable percentage of gross income to be considered is:

Number of Children	**Percentage Range of Gross Income**
2	23% to 28%

Thus twenty-five (25%) percent of $43,000.10 equals $896.00 dollars per month;

6. The parties further show that being considered as a part of the percentage awarded for child support is the existence of the following special circumstances

_____1. Age(s) of the Children

_____2. A child's extraordinary medical costs of needs in addition to accident and sickness insurance, provided that all such costs or needs shall considered if no insurance is available.

_____3. Educational Costs

_____4. Day-care costs

_____5. Shared physical custody arrangements, including extended visitation

_____6. A party's other support obligations to another household

_____7. Income that should be imputed to a party because of suppression of income

_____8. In-kind income for the self-employed, such as reimbursed meals or a company car

_____9. Other support a party is providing or will be providing, such as payment of a mortgage

_____10. A party's own extraordinary needs, such as medical expenses

_____11. Extreme economic circumstances including but not limited to:

(a) Unusually high debt structure; or

(b) Unusually high income of either party or both parties, which shall be construed as individual gross income of over $75,000.00 per annum.

_____12. Historical spending in the family for children which varies significantly from the percentage table

_____13. Considerations of the economic cost-of-living factors of the community of each party, as determined by the trier of fact.

_____14. In-kind contribution of either parent

_____15. The income of the custodial parent

_____16. The cost of accident and sickness insurance coverage for dependent children included in the order

_____17. Extraordinary travel expenses to exercise visitation or shared physical custody

_____18. Any other factor which the trier of fact deems to be required by the ends of justice, as described below:

7. Having found that no special circumstances exist, the final award of child

support which the Husband shall pay to the Wife for support of the minor children is $896.00 dollars per month, $448.00 per child, beginning on the 1st day of October, 2000, until each child becomes 18 years of age while enrolled in and attending secondary school on a full-time basis, then such support shall continue until each child completes secondary school, provided that such support shall not be required after each child completes secondary school, provided that such support shall not be required after each child attains 20 years of age. The Husband is ordered to provide accident, sickness and dental insurance for the minor Children for so long as he is obligated by this Order to provide support. Husband shall be responsible for and shall reimburse Wife one-half of any amounts not covered by medical insurance, including one-half of any co-payments and one-half of any amounts not reimbursed to Wife.

(b) Whenever in violation of this Order there is a failure to make the support payments due hereunder so that the unpaid amount equals or exceeds the amount payable for one month, the payments required to be made may be collected by the process of continuing garnishment for support;

(c) The parties agree that the Wife shall be entitled to the dependency exemption allowable under Section 151(e) of the Internal Revenue Code on federal and state income tax returns for the minor children;

(d) The non-custodial parent shall provide to the custodial parent copies of W-2 and tax returns on or before May 15 of each year or no later than 30 days from the date said return was filed, which ever is earlier. Said obligation under this paragraph

terminates when the obligation for child support terminates;

(e) It is further agreed that child support shall equal twenty-five (25%) of the Husband's gross income. Said amount shall be determined based upon a yearly review of the Husband's W-2's on February 15 of each year. Said support shall not be less than $896.00 per month;

(f) Each party shall provide the other party with the name, address of employment. If employment changes at any time, this information shall be provided to the other party within two weeks of change of employment.

(g) The Husband and Wife shall each be responsible for one-half of the college or trade school expenses for the minor children of the parties.

8. **INCOME DEDUCTION.** The parties acknowledge that the divorce decree to be rendered by the Court in this proceeding shall be subject to the requirements of O.C.G.A. § 19-6-32 (a.1) and that such decree shall provide for the immediate withholding of child support ordered by said decree unless:

1. The Court finds that there is good cause not to require such immediate withholding; or
2. This agreement provides for an alternative arrangement.

Based upon the parties knowledge of the wage-withholding of child support payments provided hereby from the wages of the parent required to pay child support hereunder.

9. **LIFE INSURANCE.** The Husband shall maintain in effect an insurance policy on his respective life in the amount of $150,000, with each child designated as beneficiary of $75,000 of said

policy. Wife shall be named as trustee for the minor Children and said party shall have full discretion for the use of all trust funds without applying to any court and without being required to file returns to any court whatsoever and without giving bond, and when received on behalf of such minor Children shall be in full satisfaction and settlement of all obligation for support of the minor Children by his or her estate after that party's death.

10. **HEALTH INSURANCE.** The Husband shall maintain in effect a policy of major medical dental and hospitalization insurance cover on the minor Children comparable to the present policy maintained by Husband's employer. The Husband shall pay all medical expenses not covered up to $20.00 co-payment per visit. Anything over $20.00 the Husband and Wife shall equally divide any medical, dental, orthodontia or prescription drug expenses not covered by said insurance coverage. The parties shall cooperate with one another in the submission of claim forms to the insurance company. In the event the Husband's employer does not offer such health insurance of if such insurance is at cost to the Husband, the parties shall equally contribute to said cost.

11. **ALIMONY**. The Husband shall pay to the Wife as alimony the sum of $450.00 per month beginning on the 1st day of October, 2000, and continuing for one (1) year or until the Wife remarries or dies.

12. **DEBTS OF THE PARTIES**. The parties agree that the Husband shall be responsible for all debts if the parties, with the exception of the Wife's one (1) VISA credit card, and she shall be responsible for the payment of any and all debt incurred on her card.

Except as provided for in this Agreement, the Husband and Wife shall not any time hereafter contract any debts, obligation or other liabilities whatsoever for which the other for his or her property or estate shall become of may become liable or answerable. The Husband and Wife shall deliver unto each other any credit cards in their possession for any charge accounts maintained in the other's name. In the event that there is a joint charge account, the cards shall be destroyed and the agreement with the organization or company providing credit shall be voided upon the execution of the within agreement. If new cards are inadvertently delivered and charges made upon said cards, the individual making such charges shall be absolutely responsible for payments of any debts.

If legal action is brought against one party to recover any debt of the other party, the parties agree to indemnify and hold the other party harmless and in addition to pay all attorney's fees and costs of collection which they may incur as a result of such liability.

13. **STOCK OPTIONS.** Husband has at least 5,174 stock options for the purchase of stock through his employment with The Home Depot. Wife shall receive as an equitable division of property below:

Property: The Home Depot options as follows:

1. 243 options granted 2/21/97 at an option price of $17.0000, vested 2/21/00, expiration 2/20/07 (including any split in shares).
2. 1,000 options granted 11/13/97 at an option price of $27.2500, vested

11/13/00, expiration 11/12/07 (including any split in shares).

3. 300 options granted 02/27/98, at an option price of $31.9375, vested 2/27/00, expiration 2/26/08 (including any split in shares).

Husband and Wife acknowledge that Wife shall be bound by all terms and condition and restrictions associated with said stock option by The Home Depot.

Wife shall have the right to determine when she wishes to exercise said options subject to the restrictions that both parties will be under by Husband's employer. Upon the Wife determining that she wishes to exercise her options, the Husband shall exercise the same in a timely fashion.

Husband and Wife acknowledge that the exercise of said options and sales of stock may be required to be in the Husband's name.

Husband shall retain, free and clear of any claim of the Wife as an equitable division of property the remaining stock options in the Home depot, 3,631 options.

14. **401K.** Husband shall transfer to the Wife the sum of Eight Thousand ($8,000.00) Dollars from his 401K account through his employers, The Home Depot. Husband shall have prepared a Qualified Domestic Relations Order so as to carry out this transfer. Husband shall retain the balance remaining in said account. This Court reserves jurisdiction to enter a subsequent Qualified Domestic Relations Order so as to carry out the intentions of this provision.

15. **FUTURE OBLIGATIONS OF THE PARTIES.** The Husband and Wife warrant,

represent and agree that they will not hereafter contract or incur any debt, charge, or liability whatsoever in the other's name or for which the other, their legal representative or their property or estate, will or may become liable. The Husband and Wife further covenant at all times to hold the other free, harmless and indemnified from and against all debts, charges and liabilities hereafter contracted or incurred by the other in breach of the provision of this paragraph.

16. **SEPARATION**. It shall be lawful for each party, at all times hereinafter, to live separate and apart from the other at such place or places as he or she may choose.

17. **INTERFERENCE.** Both parties further agree that they shall refrain from any type of harassment or abuse toward each other and to conduct themselves in a manner of peace and tranquility toward each other.

18. **INCORPORATION**. It is expressly understood that this Agreement does not obligate the parties to continue to live in a state of separation or to proceed with an action for divorce. However, in the event that either party shall bring or maintain an action for dissolution of the marital relationship, or for separate maintenance, this Agreement shall be presented to the Court and incorporated by reference into any judgment or decree concerning the matters provided herein. Notwithstanding such incorporation, this Agreement shall survive and be in force independently of any judgment or decree.

19. **STATE AND FEDERAL TAX RETURNS.** The parties agree to file separate federal and state tax returns for the tax year 2000. In the even that an audit occurs for a year in which the parties filed

a joint return, the Husband shall be responsible for any taxes, fees, and/or penalties owed in an amount equal to the ratio of that party's income as stated on the W-2 and any other income attributable to that party. In addition, the parties agree to divide the cost of an accountant and/or attorney hired in conjunction with a problem resulting from a jointly filed return according to the same formula.

20. **MERGER.** This Agreement contains the entire agreement between the parties and any and all verbal understandings or agreement previously entered into are considered merged into this written memorial.

21. **MODIFICATION.** No modification or waiver of any of the terms hereof shall be valid unless in writing signed by both parties. Both parties further agree that this Agreement and contract may be modified as provided by law.

22. **BINDING EFFECT.** In the event that any part of this Agreement shall be held invalid, such invalidity shall not invalidate the whole agreement, but the remaining provisions of this Agreement shall continue to be valid and binding to the extent that such provisions continue to reflect fairly the intent and understanding of the parties in executing this Agreement.

23. **RELEASE.** The Husband and Wife mutually release and forever discharge each other and their attorneys and representatives in this matter from any and all actions, suits, debts, claims, demands and obligations whatsoever, both in law and in equity, which either of them has or ever had or will have, upon or by reason of any matter, cause or thing up to the date of this Agreement, including, but not limited to, claims against each other's property, it being the intention

of the parties that henceforth there shall exist as between them only such rights and obligations as are specifically provided for in this Agreement.

24. **MUTUAL COOPERATION.** The parties hereto specifically acknowledge and agree that they shall cooperate in the execution of any and all document necessary and required to perform and transact and perfect the within Agreement and to do and perform all duties and acts necessary to transfer and divide any of the assets in furtherance and compliance with, and performance of, the provisions, agreements and conditions set forth herein.

25. **REPRESENTATION.** The parties hereto acknowledge that they are entering into this Agreement freely and voluntarily; that they have been advised that they are each entitled to separate legal counsel; that all of the provisions hereof, as well as all questions pertinent thereto, have been fully and satisfactorily explained to them; that each has had ample opportunity to reach this Agreement before signing same; that the provisions herein contained are fair, reasonable and adequate; and that they clearly understand and consent to all the provisions hereof.

It is recognized between the parties that Joan P. Davis is the attorney for Wife and William B. Herndon is the attorney for the Husband.

26. **FULL DISCLOSURE.** It is hereby specifically acknowledged and agreed by the parties hereto that each has voluntarily entered into the within Agreement based upon the full disclosure by each, the manifestations of such disclosure being reflected in the terms and content of the within Agreement. Both the Husband and Wife specifically affirm and swear that the assets and property

referred to in the within Agreement are the entire assets and estate of the parties. It is further acknowledged and agreed that each party has relied upon the full disclosure by the other with regard to the entire assets and estate of the parties, and that said reliance shall be deemed additional consideration for entering in the within Agreement by both parties. In the event it is discovered that the entire assets and estate of the parties have not been disclosed as set forth herein, then it is specifically acknowledged and agreed that the consideration for this Agreement shall have failed based upon the fraud or mistake of either party and the other shall be entitled to relief from this Agreement and any Decree into which this Agreement is incorporated. Such relief shall be available to the Husband or Wife, as the case may be, under the laws and statutes of the State of Georgia, whether in law, equity or both, and by consent of the other party.

27. **SURVIVABILITY OF AGREEMENT** In the event of either party's death prior to the time at which all for the obligation imposed upon that party are satisfied, the within Agreement becomes equally binding on that party's executor, administrator, or representative of the estate and to the same extent and for the same purposes. Said executor, administrator or personal representative of the estate shall fulfill all the obligations of this contract and agreement until complete termination thereof prior to the distribution of any part of the estate to any other parties.

This Agreement shall be binding on the heirs and assigns of the parties hereto.

28. **VOLUNTARINESS**. Subject to the foregoing provisions, the parties acknowledge that

they are entering into this Agreement freely and voluntarily and that they have ascertained and weighed all the facts and circumstances likely to influence their judgment herein. They have sought and obtained legal advice independently of each other and have been fully advised of their respective legal rights. They further acknowledge that all of the provisions hereof, as well as all questions pertaining thereto, have been fully and satisfactorily explained to them and that they have given due consideration to such provisions in question and that they clearly understand and consent to all provisions hereof.

29. **ENUNCIATION OF CERTAIN RIGHTS**. Except as provided herein, the Husband and Wife each hereby waive any right at law or in equity to elect to take against any Last Will made by the other, including all rights of dower or of curtesy, and hereby waives, renounces and relinquishes unto the other, their respective heirs, executors, administrators and assigns, forever, all and every interest of any or character which either may now have or may hereafter acquire in or to any real or personal property of the other, whether now owned or hereafter acquired by either. The Husband and Wife shall each have the right to dispose of his or her property by will or otherwise, in such manner as each may in his or her controlled discretion deem proper, and neither one will claim any interest in the state of the other except to enforce any obligation imposed by this Agreement.

The Husband and Wife agree to accept the provisions made for them in this Agreement and the other undertakings of the other as set forth in this Agreement in full satisfaction and discharge of

all claims, past and present, which they may have upon the other.

30. **ATTORNEY'S FEES** The Husband shall pay the sum of $1,500.00 to Joan P. Davis as and for the Wife's attorney fees in this matter.

IN WITNESS WHEREOF, the parties have hereunto set their hand and seals.

s/TRACEY ANN GRUND
TRACEY ANN GRUND

Sworn to and subscribed
before me this 9th day of
September, 2000.

s/ J. Bjork
NOTARY PUBLIC
Notary Public, Cobb County
Georgia, My Commission
Expires October 20, 2000

s/JAY PHILLIP GRUND
JAY PHILLIP GRUND

Sworn to and subscribed
before me this 29th day of
September, 2000.

s/ Ruth C. Herndon
NOTARY PUBLIC
Comm. Exp 8-29-2003